

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 247

Introduced by Senator Wyland

February 10, 2011

An act to amend Section 707 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

SB 247, as amended, Wyland. Minors: fitness hearing.

Existing law, enacted by initiative statute, enumerates specified crimes for which a minor 14 years of age or older may be prosecuted under the general law in a court of criminal jurisdiction, as specified. The initiative statute provides that any amendment of its provisions requires a $\frac{2}{3}$ vote of the membership of each house of the Legislature. *Under existing law, when a minor is alleged to have committed any of the enumerated crimes, a probation officer is required to investigate and submit a report for the court to consider in deciding whether to prosecute the minor as an adult.*

This bill would enact *Pamela and Izaiah's Law*, which would add both vehicular manslaughter while intoxicated and causing great bodily injury while driving intoxicated to those enumerated crimes. ~~The bill would make other technical, nonsubstantive changes.~~

By imposing additional responsibilities on probation officers, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as
2 “~~Izaiah’s Law.~~” “*Pamela and Izaiah’s Law.*”
3 SEC. 2. Section 707 of the Welfare and Institutions Code, as
4 amended by Section 97 of Chapter 178 of the Statutes of 2010, is
5 amended to read:
6 707. (a) (1) In any case in which a minor is alleged to be a
7 person described in subdivision (a) of Section 602 by reason of
8 the violation, when he or she was 16 years of age or older, of any
9 criminal statute or ordinance except those listed in subdivision (b),
10 upon motion of the petitioner made prior to the attachment of
11 jeopardy the court shall cause the probation officer to investigate
12 and submit a report on the behavioral patterns and social history
13 of the minor being considered for a determination of unfitness.
14 Following submission and consideration of the report, and of any
15 other relevant evidence that the petitioner or the minor may wish
16 to submit, the juvenile court may find that the minor is not a fit
17 and proper subject to be dealt with under the juvenile court law if
18 it concludes that the minor would not be amenable to the care,
19 treatment, and training program available through the facilities of
20 the juvenile court, based upon an evaluation of the following
21 criteria:
22 (A) The degree of criminal sophistication exhibited by the minor.
23 (B) Whether the minor can be rehabilitated prior to the
24 expiration of the juvenile court’s jurisdiction.
25 (C) The minor’s previous delinquent history.
26 (D) Success of previous attempts by the juvenile court to
27 rehabilitate the minor.
28 (E) The circumstances and gravity of the offense alleged in the
29 petition to have been committed by the minor.
30 A determination that the minor is not a fit and proper subject to
31 be dealt with under the juvenile court law may be based on any

1 one or a combination of the factors set forth above, which shall be
2 recited in the order of unfitness. In any case in which a hearing
3 has been noticed pursuant to this section, the court shall postpone
4 the taking of a plea to the petition until the conclusion of the fitness
5 hearing, and no plea that already may have been entered shall
6 constitute evidence at the hearing.

7 (2) (A) This paragraph shall apply to a minor alleged to be a
8 person described in Section 602 by reason of the violation, when
9 he or she has attained 16 years of age, of any felony offense when
10 the minor has been declared to be a ward of the court pursuant to
11 Section 602 on one or more prior occasions if both of the following
12 apply:

13 (i) The minor has previously been found to have committed two
14 or more felony offenses.

15 (ii) The offenses upon which the prior petition or petitions were
16 based were committed when the minor had attained 14 years of
17 age.

18 (B) Upon motion of the petitioner made prior to the attachment
19 of jeopardy the court shall cause the probation officer to investigate
20 and submit a report on the behavioral patterns and social history
21 of the minor being considered for a determination of unfitness.
22 Following submission and consideration of the report, and of any
23 other relevant evidence that the petitioner or the minor may wish
24 to submit, the minor shall be presumed to be not a fit and proper
25 subject to be dealt with under the juvenile court law unless the
26 juvenile court concludes, based upon evidence, which evidence
27 may be of extenuating or mitigating circumstances, that the minor
28 would be amenable to the care, treatment, and training program
29 available through the facilities of the juvenile court based upon an
30 evaluation of the following criteria:

31 (i) The degree of criminal sophistication exhibited by the minor.

32 (ii) Whether the minor can be rehabilitated prior to the expiration
33 of the juvenile court's jurisdiction.

34 (iii) The minor's previous delinquent history.

35 (iv) Success of previous attempts by the juvenile court to
36 rehabilitate the minor.

37 (v) The circumstances and gravity of the offense alleged in the
38 petition to have been committed by the minor.

39 A determination that the minor is a fit and proper subject to be
40 dealt with under the juvenile court law shall be based on a finding

1 of amenability after consideration of the criteria set forth above,
2 and findings therefore recited in the order as to each of the above
3 criteria that the minor is fit and proper under each and every one
4 of the above criteria. In making a finding of fitness, the court may
5 consider extenuating and mitigating circumstances in evaluating
6 each of the above criteria. In any case in which the hearing has
7 been noticed pursuant to this section, the court shall postpone the
8 taking of a plea to the petition until the conclusion of the fitness
9 hearing and no plea which already may have been entered shall
10 constitute evidence at the hearing. If the minor is found to be a fit
11 and proper subject to be dealt with under the juvenile court law
12 pursuant to this subdivision, the minor shall be committed to
13 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
14 or secure juvenile home pursuant to Section 730, or in any
15 institution operated by the Department of Corrections and
16 Rehabilitation, Division of Juvenile Facilities.

17 (3) If, pursuant to this subdivision, the minor is found to be not
18 a fit and proper subject for juvenile court treatment and is tried in
19 a court of criminal jurisdiction and found guilty by the trier of fact,
20 the judge may commit the minor to the Department of Corrections
21 and Rehabilitation, Division of Juvenile Facilities, in lieu of
22 sentencing the minor to the state prison, unless the limitations
23 specified in Section 1732.6 apply.

24 (b) Subdivision (c) shall be applicable in any case in which a
25 minor is alleged to be a person described in Section 602 by reason
26 of the violation of one of the following offenses:

27 (1) Murder.

28 (2) Arson, as provided in subdivision (a) or (b) of Section 451
29 of the Penal Code.

30 (3) Robbery.

31 (4) Rape with force, violence, or threat of great bodily harm.

32 (5) Sodomy by force, violence, duress, menace, or threat of
33 great bodily harm.

34 (6) A lewd or lascivious act as provided in subdivision (b) of
35 Section 288 of the Penal Code.

36 (7) Oral copulation by force, violence, duress, menace, or threat
37 of great bodily harm.

38 (8) An offense specified in subdivision (a) of Section 289 of
39 the Penal Code.

40 (9) Kidnapping for ransom.

- 1 (10) Kidnapping for purposes of robbery.
- 2 (11) Kidnapping with bodily harm.
- 3 (12) Attempted murder.
- 4 (13) Assault with a firearm or destructive device.
- 5 (14) Assault by any means of force likely to produce great bodily
- 6 injury.
- 7 (15) Discharge of a firearm into an inhabited or occupied
- 8 building.
- 9 (16) An offense described in Section 1203.09 of the Penal Code.
- 10 (17) An offense described in Section 12022.5 or 12022.53 of
- 11 the Penal Code.
- 12 (18) A felony offense in which the minor personally used a
- 13 weapon described in any provision listed in Section 16590 of the
- 14 Penal Code.
- 15 (19) A felony offense described in Section 136.1 or 137 of the
- 16 Penal Code.
- 17 (20) Manufacturing, compounding, or selling one-half ounce
- 18 or more of a salt or solution of a controlled substance specified in
- 19 subdivision (e) of Section 11055 of the Health and Safety Code.
- 20 (21) A violent felony, as defined in subdivision (c) of Section
- 21 667.5 of the Penal Code, which also would constitute a felony
- 22 violation of subdivision (b) of Section 186.22 of the Penal Code.
- 23 (22) Escape, by the use of force or violence, from a county
- 24 juvenile hall, home, ranch, camp, or forestry camp in violation of
- 25 subdivision (b) of Section 871 if great bodily injury is intentionally
- 26 inflicted upon an employee of the juvenile facility during the
- 27 commission of the escape.
- 28 (23) Torture as described in Sections 206 and 206.1 of the Penal
- 29 Code.
- 30 (24) Aggravated mayhem, as described in Section 205 of the
- 31 Penal Code.
- 32 (25) Carjacking, as described in Section 215 of the Penal Code,
- 33 while armed with a dangerous or deadly weapon.
- 34 (26) Kidnapping for purposes of sexual assault, as punishable
- 35 in subdivision (b) of Section 209 of the Penal Code.
- 36 (27) Kidnapping as punishable in Section 209.5 of the Penal
- 37 Code.
- 38 (28) The offense described in subdivision (c) of Section 26100
- 39 of the Penal Code.
- 40 (29) The offense described in Section 18745 of the Penal Code.

1 (30) Voluntary manslaughter, as described in subdivision (a)
2 of Section 192 of the Penal Code.

3 (31) Vehicular manslaughter while intoxicated, as described in
4 subdivision (a) or (b) of Section 191.5 of the Penal Code.

5 (32) Causing great bodily injury while driving under the
6 influence of any alcoholic beverage or drug.

7 (c) With regard to a minor alleged to be a person described in
8 Section 602 by reason of the violation, when he or she was 14
9 years of age or older, of any of the offenses listed in subdivision
10 (b), upon motion of the petitioner made prior to the attachment of
11 jeopardy the court shall cause the probation officer to investigate
12 and submit a report on the behavioral patterns and social history
13 of the minor being considered for a determination of unfitness.
14 Following submission and consideration of the report, and of any
15 other relevant evidence that the petitioner or the minor may wish
16 to submit, the minor shall be presumed to be not a fit and proper
17 subject to be dealt with under the juvenile court law unless the
18 juvenile court concludes, based upon evidence, which evidence
19 may be of extenuating or mitigating circumstances, that the minor
20 would be amenable to the care, treatment, and training program
21 available through the facilities of the juvenile court based upon an
22 evaluation of each of the following criteria:

23 (1) The degree of criminal sophistication exhibited by the minor.

24 (2) Whether the minor can be rehabilitated prior to the expiration
25 of the juvenile court's jurisdiction.

26 (3) The minor's previous delinquent history.

27 (4) Success of previous attempts by the juvenile court to
28 rehabilitate the minor.

29 (5) The circumstances and gravity of the offenses alleged in the
30 petition to have been committed by the minor.

31 A determination that the minor is a fit and proper subject to be
32 dealt with under the juvenile court law shall be based on a finding
33 of amenability after consideration of the criteria set forth above,
34 and findings therefore recited in the order as to each of the above
35 criteria that the minor is fit and proper under each and every one
36 of the above criteria. In making a finding of fitness, the court may
37 consider extenuating or mitigating circumstances in evaluating
38 each of the above criteria. In any case in which a hearing has been
39 noticed pursuant to this section, the court shall postpone the taking
40 of a plea to the petition until the conclusion of the fitness hearing

1 and no plea which may have been entered already shall constitute
2 evidence at the hearing. If, pursuant to this subdivision, the minor
3 is found to be not a fit and proper subject for juvenile court
4 treatment and is tried in a court of criminal jurisdiction and found
5 guilty by the trier of fact, the judge may commit the minor to the
6 Department of Corrections and Rehabilitation, Division of Juvenile
7 Facilities, in lieu of sentencing the minor to the state prison, unless
8 the limitations specified in Section 1732.6 apply.

9 (d) (1) Except as provided in subdivision (b) of Section 602,
10 the district attorney or other appropriate prosecuting officer may
11 file an accusatory pleading in a court of criminal jurisdiction
12 against any minor 16 years of age or older who is accused of
13 committing an offense enumerated in subdivision (b).

14 (2) Except as provided in subdivision (b) of Section 602, the
15 district attorney or other appropriate prosecuting officer may file
16 an accusatory pleading against a minor 14 years of age or older in
17 a court of criminal jurisdiction in any case in which any one or
18 more of the following circumstances apply:

19 (A) The minor is alleged to have committed an offense that if
20 committed by an adult would be punishable by death or
21 imprisonment in the state prison for life.

22 (B) The minor is alleged to have personally used a firearm
23 during the commission or attempted commission of a felony, as
24 described in Section 12022.5 or 12022.53 of the Penal Code.

25 (C) The minor is alleged to have committed an offense listed
26 in subdivision (b) in which any one or more of the following
27 circumstances apply:

28 (i) The minor has previously been found to be a person described
29 in Section 602 by reason of the commission of an offense listed
30 in subdivision (b).

31 (ii) The offense was committed for the benefit of, at the direction
32 of, or in association with any criminal street gang, as defined in
33 subdivision (f) of Section 186.22 of the Penal Code, with the
34 specific intent to promote, further, or assist in criminal conduct by
35 gang members.

36 (iii) The offense was committed for the purpose of intimidating
37 or interfering with any other person's free exercise or enjoyment
38 of a right secured to him or her by the Constitution or laws of this
39 state or by the Constitution or laws of the United States and because
40 of the other person's race, color, religion, ancestry, national origin,

1 disability, gender, or sexual orientation, or because the minor
2 perceives that the other person has one or more of those
3 characteristics, as described in Title 11.6 (commencing with
4 Section 422.55) of Part 1 of the Penal Code.

5 (iv) The victim of the offense was 65 years of age or older, or
6 blind, deaf, quadriplegic, paraplegic, developmentally disabled,
7 or confined to a wheelchair, and that disability was known or
8 reasonably should have been known to the minor at the time of
9 the commission of the offense.

10 (3) Except as provided in subdivision (b) of Section 602, the
11 district attorney or other appropriate prosecuting officer may file
12 an accusatory pleading in a court of criminal jurisdiction against
13 any minor 16 years of age or older who is accused of committing
14 one or more of the following offenses, if the minor has previously
15 been found to be a person described in Section 602 by reason of
16 the violation of a felony offense, when he or she was 14 years of
17 age or older:

18 (A) A felony offense in which it is alleged that the victim of the
19 offense was 65 years of age or older, or blind, deaf, quadriplegic,
20 paraplegic, developmentally disabled, or confined to a wheelchair,
21 and that disability was known or reasonably should have been
22 known to the minor at the time of the commission of the offense.

23 (B) A felony offense committed for the purposes of intimidating
24 or interfering with any other person's free exercise or enjoyment
25 of a right secured to him or her by the Constitution or laws of this
26 state or by the Constitution or laws of the United States and because
27 of the other person's race, color, religion, ancestry, national origin,
28 disability, gender, or sexual orientation, or because the minor
29 perceived that the other person had one or more of those
30 characteristics, as described in Title 11.6 (commencing with
31 Section 422.55) of Part 1 of the Penal Code.

32 (C) The offense was committed for the benefit of, at the direction
33 of, or in association with any criminal street gang as prohibited by
34 Section 186.22 of the Penal Code.

35 (4) In any case in which the district attorney or other appropriate
36 prosecuting officer has filed an accusatory pleading against a minor
37 in a court of criminal jurisdiction pursuant to this subdivision, the
38 case shall then proceed according to the laws applicable to a
39 criminal case. In conjunction with the preliminary hearing as
40 provided in Section 738 of the Penal Code, the magistrate shall

1 make a finding that reasonable cause exists to believe that the
2 minor comes within this subdivision. If reasonable cause is not
3 established, the criminal court shall transfer the case to the juvenile
4 court having jurisdiction over the matter.

5 (5) For an offense for which the prosecutor may file the
6 accusatory pleading in a court of criminal jurisdiction pursuant to
7 this subdivision, but elects instead to file a petition in the juvenile
8 court, if the minor is subsequently found to be a person described
9 in subdivision (a) of Section 602, the minor shall be committed to
10 placement in a juvenile hall, ranch camp, forestry camp, boot camp,
11 or secure juvenile home pursuant to Section 730, or in any
12 institution operated by the Department of Corrections and
13 Rehabilitation, Division of Juvenile Facilities.

14 (6) If, pursuant to this subdivision, the minor is found to be not
15 a fit and proper subject for juvenile court treatment and is tried in
16 a court of criminal jurisdiction and found guilty by the trier of fact,
17 the judge may commit the minor to the Department of Corrections
18 and Rehabilitation, Division of Juvenile Facilities, in lieu of
19 sentencing the minor to the state prison, unless the limitations
20 specified in Section 1732.6 apply.

21 (e) A report submitted by a probation officer pursuant to this
22 section regarding the behavioral patterns and social history of the
23 minor being considered for a determination of unfitness shall
24 include any written or oral statement offered by the victim, the
25 victim's parent or guardian if the victim is a minor, or if the victim
26 has died, the victim's next of kin, as authorized by subdivision (b)
27 of Section 656.2. Victims' statements shall be considered by the
28 court to the extent they are relevant to the court's determination
29 of unfitness.

30 *SEC. 3. If the Commission on State Mandates determines that*
31 *this act contains costs mandated by the state, reimbursement to*
32 *local agencies and school districts for those costs shall be made*
33 *pursuant to Part 7 (commencing with Section 17500) of Division*
34 *4 of Title 2 of the Government Code.*